Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**
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COMMENTS OF THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

The Washington Utilities and Transportation Commission (WUTC)[1] provides these comments in response to the Federal Communications Commission's (FCC's) Notice of Proposed Rulemaking (NPRM) proceeding.[2] Through the NPRM, the FCC seeks comment on how to reasonably define the statutory terms "sufficient" and "reasonably comparable," and specifically seeks comment on the support mechanism for non-rural carriers. The FCC calls carriers who serve both urban and rural areas "non-rural" carriers. It is inaccurate and inappropriate to classify carriers who serve both urban and rural areas as "non-rural" when

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[1] The WUTC is an agency of the State of Washington, composed of three member commissioners appointed by the governor. The WUTC has statutory authority to regulate the rates and conditions of services of certain telecommunications companies operating within the state.

[2] *In the Matter of Federal-State Joint Board on Universal Service and High Cost Universal Service Support,* CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 05-205, released December 9, 2005.

approximately 70 percent of rural telephone consumers are served by one of about 30 so-called non-rural carriers.[3]

The Commission should make quick work of a relatively simple fix of the high-cost program whether or not it is ready to tackle a more ambitious agenda. Support to high-cost rural areas should not be based on whether that area is served by a rural or a non-rural carrier. Support should be based on the costs to serve consumers in each exchange. Support based on costs to serve an exchange has proved workable in Washington for the purposes of Eligible Telecommunications Carrier designations. Alternatively, the Commission should consider basing support on the costs to serve a wire center where data is available.

In 2003, more than half of the non-rural, high-cost support program ($120 million out of $234 million) benefited customers in Mississippi. Nearly 85 percent of the program went to three states — Mississippi, Alabama ($41 million) and West Virginia ($31 million). Only eight states received funding. Meanwhile, 42 states — including some of the nation's least densely populated — received no support at all.

In 2004, the FCC added two states, South Dakota and Nebraska. The change added approximately $50 million to the high-cost fund. For 2005, the Universal Service Administrative Company (USAC) projected that only 10 states (Alabama, Kentucky, Maine, Mississippi, Montana, Nebraska, South Dakota, Vermont, West Virginia and Wyoming) would receive non-rural carrier high-cost support.[4] For 2006, USAC projects that only those same 10 states will

[3] Margaret L. Rettle of Strategic Policy Research, *Non-Rural Telephone Companies Serve Over 70 Percent of Rural Subscribers*, January 8, 1998. http://www.spri.com/pdf/reports/usta/rural.pdf
[4] Appendix HC02 to USAC Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2005, November 2, 2004.

receive non-rural carrier high-cost support.[5] Forty states, including Washington, pay an increasing amount into, but remain shut out of, the program.

Neither the FCC's current mandate nor a "reasonably comparable" standard allows for these huge disparities. The Tenth Circuit's invalidation of high cost support[6] provides the FCC an opportunity to review its policies and ensure an equitable distribution of universal service support among the states and rural customers. This means that the FCC must consider the impact of its high-cost support mechanism on Qwest's ability to fund investment in Washington State.

The current scheme fails to do this. The high cost model compares a non-rural carrier's statewide average costs to a national average and provides funding to non-rural carriers only in states where the state's average cost is higher than about 130 percent of the national average. This statewide averaging approach is arbitrary and disadvantages rural customers in most states where one or more low cost-of-service areas exist in the state.

First, it relies on a state mechanism to distribute support from lower-cost areas to higher-cost areas. Washington State does not have a state universal service fund. By law, the FCC must look at a carrier's actual costs to serve and may not presume an in-state support mechanism. Pursuant to 47 U.S.C. § 254(b)(5), the Commission must ensure sufficiency of high-cost support in Washington State taking into account the absence of, not the possibility of, a state universal service fund. The Commission may not reduce or condition federal support based on the lack of state universal service support.

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[5] Appendix HC02 to USAC Federal Universal Service Support Mechanisms Fund Size Projections for the First Quarter 2006, November 2, 2005.
http://www.universalservice.org/about/governance/fcc-filings/2006/Q1/HC02%20-%20High%20Cost%20Support%20Projected%20by%20State%20-%201Q2006.xls

[6] Qwest Corp. v. FCC, 398 F.3d 1222 (10th Cir. 2005); 47 U.S.C. § 254(b).

Second, the Commission's mechanism provides a regulatory incentive for carriers to spin-off their higher cost, rural properties to separate companies. Those separate companies might then qualify for high-cost support, but in doing so, lose economies of scale and scope, access to more advanced technologies, and other advantages that may be available from organization as part of a larger company. Eligibility for high-cost support should not depend on organizational structure.

Instead of calculating high-cost support by carrier, the FCC should calculate high-cost support by the costs to serve an exchange or, where data is available, a wire center. This change would target support to customers who are expensive to serve rather than to carriers who have high costs. This change could foster greater competition in high-cost exchanges.

The FCC has the authority to make these necessary changes to its distribution mechanism to make the high-cost program rational and fair. The Commission's failure to make these necessary changes has attracted the attention of Congress.[7] However, the Commission should not wait for this specific direction from Congress to do the job it is already tasked to do: making rural high cost funds available on a fair and equitable basis to all customers in rural and high-cost areas.

RESPECTFULLY SUBMITTED this 27th day of March, 2006.

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[7] In 2004, Senate Bill 130 Rural Universal Service Equity Act sponsored by Oregon Senator Gordon Smith passed out of the Committee on Commerce, Science, and Transportation. This same bill was sponsored by Representative Lee Terry as HR 1582.